

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE:

Luz Salazar,

DEBTOR.

CASE NO.: 08-23565-

Chapter: 7

Judge Robert D. Drain

-----X

**AFFIRMATION IN OPPOSITION TO DEBTOR'S MOTION TO
SURRENDER REAL PROPERTY AND TO QUIT-CLAIM
PROPERTY TO THE MORTGAGE HOLDER**

**TO: THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE:**

Richard Postiglione, an attorney at law duly admitted to practice before the Courts of the State of New York, hereby affirms the following to be true under penalty of perjury:

1. I am regularly associated with Rosicki, Rosicki & Associates, P.C., counsel for Wells Fargo Bank, N.A., as Trustee, ("Wells Fargo") a secured creditor of Luz Salazar (the "Debtor") and as such, am fully familiar with the facts and circumstances contained herein.

2. The Affirmation is submitted in opposition to the instant motion of the Debtor seeking to surrender and quitclaim the property to Wells Fargo (the "motion").

BACKGROUND

3. Wells Fargo is the holder, by assignment, of a Note and Mortgage, in the original principal amount of \$535,200.00, given by the Debtor pledging the property known as 195 Fisher Avenue, White Plains, NY 10606 (the "property") as security.

4. As no monthly mortgage installments were being received by Wells Fargo, a foreclosure action was commenced in the Supreme Court of the State of New York, Westchester County, on or about December 28, 2007. Wells Fargo obtained a Judgment of Foreclosure and Sale

(the “Judgment”) on or about June 2, 2008.

5. The Debtor filed the instant petition on October 27, 2008 and Wells Fargo was stayed from proceeding with the foreclosure action. Wells Fargo moved for relief from the automatic stay on January 21, 2009 which was rendered moot by the Honorable Adlai. S Hardin Jr., on February 25, 2009 as the Debtor received a discharge.

6. As a result, Wells Fargo proceeded with its foreclosure action. Pursuant to the Judgment, a foreclosure sale was conducted on June 25, 2009, whereat Wells Fargo was the successful purchaser. A copy of the Referee’s Deed is attached hereto as Exhibit “A”.

THE MOTION

7. The Debtor now seeks to quitclaim the property to Wells Fargo; however, the Debtor no longer has any interest in the property to convey. As noted above, the property was already conveyed to Wells Fargo at the foreclosure sale. *See Exhibit “A”*.

8. The Debtor also seeks reimbursement for two water bills dated June 8, 2009 in the amount of \$123.49 (the “first water bill”) and July 29, 2009 in the amount of \$128.93 (the “second water bill”). The water bills are attached as Exhibit “C” to the Debtor’s motion.

9. According to the Debtor’s Exhibit “C” the first water bill has a due date of June 8, 2009. The Debtor was liable to pay this bill to the City of White Plains as Wells Fargo did not take ownership of the property until the June 25, 2009 foreclosure sale, more than two weeks after the bill was due to be paid. Wells Fargo is not responsible for the payment of this water bill.

10. The second water bill has a due date of August 1, 2009 however, as indicated at the top of the water bill, these charges are for service from December 3, 2008 to June 5, 2009. Again, the Debtor was liable for these charges as Wells Fargo did not have the ownership of the property during this time period. Wells Fargo is also not responsible for the payment of this water bill.

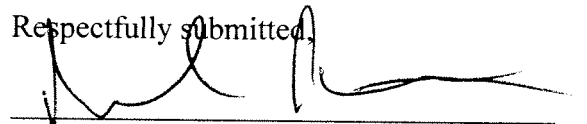
11. In paragraph fifteen of the motion the attorney for the debtor indicates that she placed a call to our firm and requested the address for Wells Fargo. It seems apparent that this conversation resulted in a misunderstanding as Wells Fargo is not a "web-based" company as stated in the motion. If the debtor wishes to forward notices they can be sent to Wells Fargo Bank, NA as Trustee c/o HomeEq Servicing, 701 Corporate Center Drive, Raleigh, N.C. 27607.

12. As Wells Fargo has already taken ownership of the property the Debtor no longer has an interest to convey, and Wells Fargo should not be directed to accept deliverance and record the proposed quitclaim deed. Wells Fargo is also not liable to pay the water bills for services rendered prior to it taking ownership of the property. Therefore, the Debtor's motion should be denied in its entirety.

WHEREFORE, your Affirmant respectfully requests this Court to deny Debtor's Motion in its entirety, and for such other and further relief as the Court may deem just and proper.

Dated: October 9, 2009
Plainview, New York

Respectfully submitted,



ROSICKI, ROSICKI & ASSOCIATES, P.C.
By Richard Postiglione, Esq.
Attorneys for Wells Fargo
51 E. Bethpage Road
Plainview, NY 11803
(516) 741-2585

Exhibit A

THIS DEED, made July 17th, 2009

BETWEEN JOHN CHARLES GUTTRIDGE Esq., 303 S BROADWAY STE 100, TARRYTOWN, NY 10591-5463 Referee duly appointed in the action hereinafter mentioned, Grantor, and

WELLS FARGO BANK, N.A. as Trustee under POOLING AND SERVICING AGREEMENT Dated as of August 1, 2005 Asset-Backed Pass-Through Certificates Series 2005-WHQ4, 4837 WATT AVENUE, SUITE 100, NORTH HIGHLAND, CA 95660 Grantee,

WITNESSETH that the grantor, the referee appointed in an action between WELLS FARGO BANK, NA AS TRUSTEE and LUZ SALAZAR ; et al, Defendants under Index No. 07-26049 Westchester County Supreme Court 111 Dr. Martin Luther King Jr. Blvd., foreclosing a mortgage recorded on September 30, 2005, in the Office of the Clerk of the County of Westchester, in Control #: 452660017 of Mortgages, in pursuance of a judgment entered at an IAS Term, Part RMD of the Supreme Court, on June 2, 2008, and in consideration of one hundred thirty four thousand one hundred seventy nine and 12/100 (\$134,179.13) Dollars paid by the grantee, being the highest sum bid at the sale under said judgment, does hereby grant and convey unto the grantee

The foreclosure sale was held on June 25, 2009

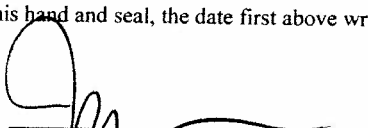
Said premises known as and by the street address: 195 Fisher Avenue, White Plains, NY 10606.

SEE SCHEDULE "A" ANNEXED HERETO AND MADE A PART HEREOF.

Said premises being and intended to be the same premises conveyed by Deed dated June 8, 2005 from RICARDO BU to LUZ SALAZAR recorded September 30, 2005 in CONTROL NUMBER 452660014.

TO HAVE AND TO HOLD the premises granted unto the grantee WELLS FARGO BANK, N.A. as Trustee under POOLING AND SERVICING AGREEMENT Dated as of August 1, 2005 Asset-Backed Pass-Through Certificates Series 2005-WHQ4, and its assigns forever. Whenever the text requires, the singular number herein shall include the plural and all genders.

IN WITNESS WHEREOF, the grantor has set his hand and seal, the date first above written.



JOHN CHARLES GUTTRIDGE, Esq.
Referee

STATE OF NEW YORK

COUNTY OF WESTCHESTER

On the 17th day of July in the year 2009, before me, the undersigned, a notary public in and for said state, personally appeared JOHN CHARLES GUTTRIDGE, Esq., personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity that by his/her their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s), acted executed the instrument.

ANTHONY LAURIELLO
Notary Public, State of New York
No. 02LA5042145
Qualified in New York County
Commission Expires 04/17/2011


NOTARY PUBLIC

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the City of White Plains, County of Westchester and State of New York, known and designated as part of Lot Number 24 on a certain map entitled, "Map of Building Lots in the Village of White Plains, Westchester Co., N.Y., owned by Samuel J. Barnes and Haviland" surveyed on March 1891 by a Oliver A. Hyatt, Surveyor and filed in the County Clerk's Office, Division of Land Records, formerly Register's Office of Westchester County on March 7, 1892 in Volume 9 of Maps at page 81, said lot being more particularly bounded and described according to said map as follows:

BEGINNING at the corner formed by the intersection of the Southwesterly side of Lafayette Street with the Southeasterly side of Fisher Avenue; and

RUNNING THENCE along the Southwesterly side of Lafayette Street, South 41 degrees 58 minutes East 122.8 feet to land now or formerly of F. Herbert Howell;

RUNNING THENCE along the last mentioned land, South 48 degrees 02 minutes West 55 feet to land now or formerly of Louise Fowler;

RUNNING THENCE along the last mentioned land, North 41 degrees 58 minutes West 134.20 feet to the Southeasterly side of Fisher Avenue; and

RUNNING THENCE along the said Southeasterly side of Fisher Avenue, North 59 degrees 44 minutes 20 seconds East 56.17 feet to the point and place of BEGINNING.

Index No. 07-26049

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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JOHN CHARLES GUTTRIDGE, ESQ.

Grantor,

TO

WELLS FARGO BANK, N.A. AS TRUSTEE UNDER
POOLING AND SERVICING AGREEMENT DATED
AS OF AUGUST 1, 2005 ASSET-BACKED PASS-
THROUGH CERTIFICATES SERIES 2005-WHQ4

Grantee

-----X

REFEREE'S DEED IN FORECLOSURE

SECTION: 130.25
BLOCK: 7
LOT: 1

RECORD AND RETURN TO:

WELLS FARGO BANK, N.A. as Trustee under POOLING AND SERVICING AGREEMENT
Dated as of August 1, 2005 Asset-Backed Pass-Through Certificates Series 2005-WHQ4
4837 WATT AVENUE, SUITE 100
NORTH HIGHLAND, CA 95660

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE:

Luz Salazar,

DEBTOR.

CASE NO.: 08-23565-

Chapter: 7

Judge Robert D. Drain

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AFFIDAVIT OF SERVICE

STATE OF NEW YORK)

) ss:

COUNTY OF NASSAU)

Richard Postiglione, being duly sworn, deposes and says:

I am not a party to this action, am over 18 years of age and reside in Queens, New York.

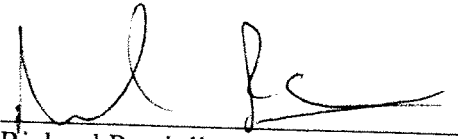
On October 9, 2009, I served the within Affirmation in Opposition to the Debtors' Motion to Surrender Real Property and to Quit-Claim Property to the Mortgage Holder on the following parties, by depositing a true copy thereof in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to each of the following persons at the last known address set forth after each name:

Luz Salazar
44 Church Street,
New Rochelle, NY 10801

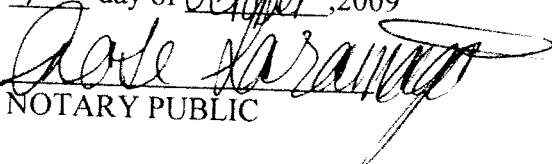
Linda Tirelli, Esq.
Westchester Legal Credit Solutions Inc.
202 Mamroneck Avenue, 3rd Floor
White Plains, NY 10601

Mark S. Tulis, Esq.
Oxman, Tulis, Kirkpatrick, Whyatt, & Geiger, LLP
120 Bloomingdale Road
White Plains, NY 10605

U.S. Trustee
33 Whitehall Street 21st Floor
New York, NY 10004


Richard Postiglione

Sworn to before me on this
9th day of October, 2009


NOTARY PUBLIC

Rose Saravali
Notary Public State of New York
No. 0154001
Qualified in Suffolk County
Commission expires March 15, 2011

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE:

Luz Salazar,

DEBTOR.

CASE NO.: 08-23565-

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**AFFIRMATION IN OPPOSITION TO DEBTOR'S MOTION TO SURRENDER
REAL PROPERTY AND TO QUIT-CLAIM PROPERTY TO THE MORTGAGE
HOLDER**

**ROSICKI, ROSICKI & ASSOCIATES, P.C.
51 E. Bethpage Road
Plainview, NY 11803
(516) 741-2585**

ROSICKI, ROSICKI & ASSOCIATES, P.C.

ATTORNEYS AT LAW

Office: 51 East Bethpage Road

Plainview, New York 11803

Telephone (516) 741-2585

Facsimile (516) 873-7243

October 9, 2009

VIA OVERNIGHT MAIL

United States Bankruptcy Court
Southern District of New York
300 Quarropas Street
White Plains, NY 10601

Re: Debtor: Luz Salazar

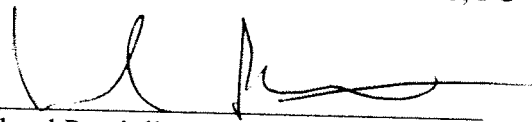
Bankruptcy Case No.: 08-23565-rdd
Chapter 7

Dear Sir/Madam:

Enclosed please find a copy of an Affirmation in Opposition to Debtor's Motion to Surrender Real Property and to Quit-Claim Property to the Mortgage Holder. Please note that Debtor's Motion is scheduled for presentment on October 13, 2009 at 10:00 a.m.

Should you have any questions please feel free to contact the undersigned. Your assistance is greatly appreciated.

Very Truly Yours,
ROSICKI, ROSICKI & ASSOCIATES, PC



Richard Postiglione, Esq.